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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Order 2000-6-12

Issued by the Department of Transportation
on the 15th day of June, 2000

Served: June 15, 2000

Application of
AMERICAN AIRLINES, INC.
for an exemption under 49 U.S.C. §40109

Docket OST-2000-6725-15

Application of
AER LINGUS LIMITED
for an exemption under 49 U.S.C. §40109

Docket OST-2000-6726-26

Application of
AER LINGUS LIMITED
for a statement of authorization under 14 CFR Part 212

Docket OST-2000-6728-21

FINAL ORDER

Summary

In this order we are making final our tentative conclusions set forth in Order 2000-5-19, granting, for a one-year term: (1) American Airlines, Inc., exemption authority to conduct scheduled operations in the New York-Shannon/Dublin market; (2) Aer Lingus Limited, a statement of authorization to display American's designator code in a number of U.S.-Shannon/Dublin markets; and (3) Aer Lingus, exemption authority to conduct scheduled operations in the Baltimore-Shannon/Dublin market.

Background

By Order 2000-5-19, served May 12, 2000, we directed interested persons to show cause why we should not grant (1) American exemption authority to conduct scheduled foreign air transportation of persons, property, and mail between New York, New York and Shannon/Dublin, Ireland; (2) Aer Lingus a statement of authorization to permit it to place American's designator code on Aer Lingus flights in the New York/Boston/Chicago/Los Angeles-Shannon/Dublin markets; and (3) Aer Lingus exemption authority to conduct scheduled foreign air transportation of persons, property, and mail between Baltimore, Maryland, and Shannon/Dublin, Ireland. The order directed persons objecting to the Department's tentative findings and conclusions set forth in that order to file their objections within ten calendar days after the date of service of that order, and to file answers to any objections within five calendar days thereafter.

In our tentative decision, we stated that American's request to serve the New York-Shannon/Dublin market is encompassed by the U.S.-Ireland Air Transport Services Agreement, as amended. In the case of Aer Lingus, we pointed out that while neither the code-share authority nor the authority to serve Baltimore is encompassed by the U.S.-Ireland Air Transport Services Agreement, we had confirmed on April 27, 2000, with the Government of Ireland that the Irish authorities would approve the pending code-share request of United and British Midland, would look favorably on a third-country code-share application if filed by Northwest, and would accept same-country code-sharing for U.S. carriers; and that we would approve the Aer Lingus /American code-share request and Aer Lingus' request to serve Baltimore. In light of that April 27 undertaking, we tentatively believed that approval of the Aer Lingus applications at issue was warranted in the public interest.

Responsive Pleadings

Comments to Order 2000-5-19 were filed by United Air Lines, Inc. and Federal Express Corporation.¹ Aer Lingus filed a reply to the comments, and the State of Maryland filed an answer to the pleading of Federal Express.

United states that it has no objection to our finalizing our tentative decision so long as, at the same time, we grant the pending application of British Midland Airways Limited to carry United's code on British Midland's flights between London Heathrow and Dublin.²

¹ Federal Express accompanied its responsive pleading with a motion for leave to file. We will grant this motion.

² See undocketed application of British Midland Airways filed February 13, 1996. We received no opposition to United's request for concurrent grant of British Midland's application.

Federal Express states that it is encouraged by the Government of Ireland's apparent willingness to allow U.S. carriers to serve Dublin through code-shares without the Shannon stop requirement, and has therefore elected not to object to the finalization of Order 2000-5-19. However, it states that it is concerned about long-term impact of the recent U.S.-Ireland undertaking on the prospects for our negotiating a total elimination of the Shannon stop requirement, since it has removed some of the pressure from the Government of Ireland to negotiate such elimination. Federal Express also states that we should make clear to the Government of Ireland that renewal of the authorities at issue in this proceeding will depend on substantial progress being made over the course of the next year toward a general liberalization of aviation relations with Ireland, particularly with respect to the elimination of Shannon stop requirement, and further states that, if progress is not achieved to eliminate the Shannon stop requirement, it will strenuously object to any renewal request filed by the carriers.

Aer Lingus notes that neither United nor Federal Express oppose finalization of Order 2000-5-19, and that it does not itself oppose our grant of the pending British Midland request to conduct London Heathrow-Dublin code-share operations with United. Aer Lingus also states that the comments of Federal Express concerning its possible future objection to a renewal request, if inadequate progress is made in U.S.-Ireland talks, represent in its view negotiating advice to the Department which needs not be addressed in any final Department order in this proceeding.

The State of Maryland states that it concurs with the removal of the Shannon stop requirement as an important goal, but believes that new U.S.-Ireland services should not be conditioned or withdrawn based on whether that goal is achieved.

Decision

We have decided to finalize our tentative findings and conclusions in Order 2000-5-19. In taking this action, we note that significant public benefits will flow from the approval of the American/Aer Lingus requests. These new services, and the services by U.S. carriers that the Irish Government has undertaken to approve, will substantially enhance competition in the U.S.-Ireland market and will provide important, valuable benefits to the traveling public and to all of the U.S. cities which will be affected by these new services. In light of these benefits, and the April 27 undertaking referred to above, we find that finalization of our tentative decision in Order 2000-5-19 is in the public interest.

We also note that United and Federal Express do not oppose our finalization of that order.³ At the same time we share the Federal Express concerns about the Shannon stop requirement. In this regard, we emphasize that, as we said in Order 2000-5-19, our decision here does not lessen our desire to reach agreement to eliminate the Shannon stop

³ We are concurrently granting the British Midland application to which United referred in its comment.

requirement as it applies to U.S. carriers, and we will continue to urge the Government of Ireland to work with us to achieve that end.⁴

ACCORDINGLY,

1. We make final our tentative findings and conclusions set forth in Order 2000-5-19;
2. We grant American Airlines, Inc. an exemption under 49 U.S.C. 40109 to permit it to conduct scheduled foreign air transportation of persons, property, and mail between New York, New York and Shannon/Dublin, Ireland, subject to the terms, conditions, and limitations of American's certificates of public convenience and necessity, and to the conditions in Appendices I and II to this order;
3. We grant Aer Lingus Limited a statement of authorization under 14 CFR Part 212 to permit it to place American's designator code on Aer Lingus flights in the following markets: New York-Shannon/Dublin, Boston-Shannon/Dublin, Chicago-Shannon/Dublin, and Los Angeles-Shannon/Dublin, subject to the conditions in Appendix II to this order;
4. We grant Aer Lingus Limited an exemption under 49 U.S.C. 40109 to permit it to conduct scheduled foreign air transportation of persons, property, and mail between Baltimore, Maryland, and Shannon/Dublin, Ireland, subject to the terms, conditions, and limitations of Aer Lingus' foreign air carrier permit (Order 91-5-28);
5. The authorities granted above will be effective immediately and will remain in effect for one year;
6. We grant the motion of Federal Express Corporation for leave to file;
7. Our actions described above will be subject to amendment or modification, at our discretion and without hearing, should such action be necessary in the public interest;
8. To the extent not granted, we deny all requests for relief in Dockets OST-2000-6725, OST-2000-6726 and OST-2000-6728;
9. Our actions described above will not constitute major regulatory actions under the Energy Policy and Conservation Act of 1975; and
10. We will serve a copy of this order on American Airlines, Inc., Aer Lingus Limited, Continental Airlines, Inc., Delta Air Lines, Inc., Federal Express Corporation, Northwest

⁴ We see no need now to address the possible impact of the Shannon stop issue on renewal of these authorities. Should the applicants seek renewal, interested parties will be free at that time to raise arguments germane to the public interest finding we must make as part of any renewal decision, including arguments going to the state of our aviation relationship with Ireland.

Airlines, Inc., United Air Lines, Inc., the State of Maryland, the Massachusetts Port Authority, the Embassy of Ireland in Washington, D.C., the Department of State, and the Federal Aviation Administration (AFS-50).

By:

A. BRADLEY MIMS
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

Appendices

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

APPENDIX I**Conditions Applicable to American Airlines**

In the conduct of the authorized exemption operations, American shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations, including all FAA requirements concerning security; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

APPENDIX II**Conditions applicable to American Airlines and to Aer Lingus:**

The code-share operations authorized here are subject to the following conditions:

- (1) American and/or Aer Lingus must promptly notify the Department if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. Such notices should be filed in Docket OST-2000-6728;¹
- (2) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; that the passenger liability of the operating carrier be unaffected; and that the operating carrier shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition; and
- (3) The authority granted here is specifically conditioned so that neither carrier shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

¹ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.